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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

GIUSTINA LAND & TIMBER CO., LLC, a domestic limited liability company;
CADORE TIMBER CO., a domestic general partnership; **GIUSTINA WOODLANDS LIMITED PARTNERSHIP**, a domestic limited partnership; and **GIUSTINA TREE FARMS LIMITED PARTNERSHIP**, a domestic limited partnership,

Plaintiffs,

vs.

EUGENE WATER & ELECTRIC BOARD, an Oregon registered electric utility; **LANE ELECTRIC COOPERATIVE, INC.**, an Oregon registered electric utility; **BONNEVILLE POWER ADMINISTRATION**, an administrative body of the **UNITED STATES DEPARTMENT OF ENERGY**, and **DOES 1-50**.

Defendants.

Case No. _____

COMPLAINT

- Negligence
- Trespass
- Nuisance
- Gross Negligence/Recklessness

Demand For Jury Trial



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The Plaintiffs hereby allege the following:

1.

The Plaintiffs are victims of the Holiday Farm Fire that originated on September 7, 2020, from which they suffered immense actual losses as set forth herein. The following allegations, where applicable, are based upon personal knowledge, information and belief, and the investigation and research of counsel along with qualified experts, against Eugene Water & Electric Board (Hereinafter “EWEB”), Lane Electric Cooperative, Inc. (Hereinafter “Lane Electric”) and Bonneville Power Administration an administrative body of the United States Department of Energy (Hereinafter “BPA”).

BRIEF OVERVIEW

2.

In advance of September 7, 2020, it was well publicized, including via the National Weather Service issuing multiple warnings of forecasted hazardous weather with high winds and extreme wildfire risk, that dangerous conditions were going to converge in Lane County, Oregon – including in eastern Lane County up the McKenzie River Valley.

Specifically, it was widely reported and predicted that hot dry winds from the east in excess of 60 miles per hour were expected to arrive in Lane County on the evening of September 7, 2020. The resulting high risk of wildfire was exacerbated due to the conditions existing in eastern Lane County, including the McKenzie River Valley, already being under fire conditions deemed “EXTREME” as posted on signage throughout the McKenzie Valley and in numerous bulletins. Further, the National Weather Service even went as far as issuing a rare “EXTREMELY CRITICAL” designation which is utilized only when its forecasters are confident of extremely dangerous wildfire conditions being present.

3.



Due to forecasted hot dry winds from the east on September 7, 2020, other utilities in the State of Oregon preemptively deenergized their powerlines. The action of other utilities to preemptively deenergize their powerlines no doubt prevented much property destruction and loss of lives in the impacted areas.

4.

Despite the forecasts and widely publicized anticipated high east winds imposed over EXTREME fire conditions, EWEB, Lane Electric and BPA did not preemptively deenergize their powerlines running through the McKenzie River Valley, including the communities of Rainbow, Blue River, Nimrod and Vida.

5.

Further, it was fact and well known by EWEB, Lane Electric and BPA that their respective powerlines ran amongst tall trees that could easily be blown over and result in contact with their energized powerlines, creating a source of ignition for fire in the already existing EXTREME conditions.

6.

Further, EWEB, Lane Electric and BPA were aware and had previously acknowledged, including on their own websites, that preemptively deenergizing or shutting off their powerlines in advance of such conditions would greatly reduce the risk of fire and the catastrophic results. Despite this acknowledgement, EWEB, Lane Electric and BPA did not preemptively take such action but instead left their powerlines energized as the anticipated and forecasted high east winds began to blow.

7.

Further, EWEB, Lane Electric and BPA were aware that their respective powerlines ran in close proximity to each other and crossed/joined each other at points, including creating the scenario of energizing each other's respective powerlines.

8.

Upon information and investigation, the acts and/or omissions of EWEB, Lane



Electric and BPA set in motion a catastrophic but preventable fire that became known as the Holiday Farm Fire, which caused loss of life and forever changed the lives of those that lived or made their living up the McKenzie River Valley. As described below with greater specificity, the Holiday Farm Fire burned approximately 174,000 acres total with the Plaintiffs' having approximately a combined 17,000 acres of their land and timber upon it burned – thus, approximately 10% of the total acres burned by the Holiday Farm Fire were owned by the Plaintiffs.

THE PARTIES

9.

Plaintiff Giustina Land & Timber Co., LLC is a long-standing family-owned forest management company that is duly registered with the State of Oregon Secretary of State as a Domestic Limited Liability Company at all material times herein.

10.

Plaintiff Cadore Timber Co. is a long-standing family-owned forest management domestic general partnership at all material times herein.

11.

Plaintiff Giustina Woodlands Limited Partnership is a long-standing family-owned forest management Domestic Limited Partnership duly registered with the State of Oregon Secretary of State at all material times herein.

12.

Plaintiff Giustina Tree Farms Limited Partnership is a long-standing family-owned forest management Domestic Limited Partnership duly registered with the State of Oregon Secretary of State at all material times herein.

13.

Defendant EWEB is purportedly Oregon's largest consumer-owned utility, a registered electric utility in Oregon and claims to be chartered by the City of Eugene with its powerlines and utility infrastructure running through and located in the McKenzie



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River Valley in Lane County, Oregon. To the extent required, the Plaintiffs complied with ORS 30.275 by providing a timely tort claim notice to EWEB and its known legal counsel dated March 4, 2021.

14.

Defendant Lane Electric is a domestic cooperative and registered electric utility in Oregon with its powerlines and utility infrastructure running through and located in the McKenzie River Valley in Lane County, Oregon.

15.

Defendant BPA is an administrative agency within the United States Department of Energy based in the Pacific Northwest with its Administrator and office headquarters located in Portland, Oregon, as established pursuant to the Bonneville Power Act of 1937, 16 U.S.C. § 832(a). It owns and operates power lines and other electric equipment and infrastructure in Oregon to transmit, supply and provide electricity to public and private consumers. Defendant BPA was provided proper and timely notice pursuant to the Federal Tort Claims Act (FTCA), including being initially provided on or about August 30, 2022 and September 7, 2022, a copy of the Plaintiffs' lawsuit previously filed in Lane County Circuit Court by Defendant EWEB and Defendant Lane Electric in their respective tort notices of claims. In addition, the Plaintiffs sent their own Notice of Claim/Supplemental Notice of Claim for Damages under the Federal Tort Claims Act to BPA dated December 21, 2023, based upon the discovery of subsequent information and investigation which revealed a potential earlier or alternative ignition point for the Holiday Farm Fire from the BPA powerlines. On January 3, 2024, the Office of General Counsel for BPA acknowledged via email receipt of the Plaintiffs' Notice of Claim/Supplemental Notice of Claim for Damages under the Federal Tort Claims Act to BPA dated December 21, 2023. Subsequently, the Plaintiffs and their counsel received no further communications or response from BPA with 6 months since passing entitling the Plaintiffs to now move forward with this suit against BPA.



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16.

Defendants, DOES 1-50, are potential unknown individuals and entities that are proper parties in this matter, but their identities are currently unknown due to lack of information and discovery. All claims asserted against EWEB, Lane Electric and BPA are currently and hereby asserted as well against DOES 1-50.

FACTS

17.

Upon information and belief, including information provided by EWEB and Lane Electric, a tree or trees down river from the community of Rainbow fell across EWEB powerlines after the forecasted high east winds began at approximately 5:15 pm on September 7, 2020. At that time, the EWEB, Lane Electric and BPA powerlines were energized and there had not been a preemptive and voluntary deenergizing by EWEB, Lane Electric or BPA of its powerlines such as conducted by other utilities. Upon investigation, information and belief, the EWEB and BPA powerlines may have earlier been automatically and involuntarily deenergized due to a tree falling across their powerlines from the forecasted high winds.

18.

It is the asserted the position of EWEB and Lane Electric that information and investigation has led to the discovery that an initial fire began when a tree fell upon BPA powerlines at approximately 5:25 pm across the McKenzie River from approximately Milepost 43 on the McKenzie Highway (Highway 126) in Lane County, Oregon. To date, no official fire report is known to have been released by any investigating governmental agency. Upon information and belief, the falling of the tree that caused this initial fire may have been the reason for the power in the EWEB powerlines to automatically or involuntarily deenergize as described above.



19.

At approximately the same time, an employee of Lane Electric was patrolling its powerlines and relayed that the Lane Electric powerlines needed to be deenergized – which was not done despite the existing winds and conditions. Further, EWEB deliberately chose to delay patrolling and inspecting its powerlines until September 8, 2020, while citing high winds and extreme fire danger as the reason.

20.

Over the following approximately three hours, the forecasted high east winds and the EXTREME fire conditions continued but EWEB, Lane Electric and BPA did not take reasonable and appropriate actions to minimize the risk of the catastrophic Holiday Farm Fire. Lane Electric continued to not deenergize its powerlines while EWEB and BPA did not preemptively and voluntarily deenergize their powerlines.

21.

Specifically, EWEB's powerlines crossed directly over Lane Electric powerlines near the community of Rainbow. Upon information and belief, the forecasted winds continued while additional trees fell upon the EWEB powerlines which caused them to sag and move closer to the ground and the crossover point (hereinafter "Crossover Point") with the Lane Electric powerlines on the north side of Highway 126 near the community of Rainbow. The location of the Crossover Point is set forth on attached Exhibit A.

22.

As the progressive sag of the EWEB powerlines continued due to trees falling upon them, the EWEB powerlines moved closer to the underlying Lane Electric powerlines at the Crossover and ultimately came into proximity or actual contact at which time the EWEB powerlines were already energized or became re-energized from the Lane Electric powerlines.



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23.

Upon investigation, information and belief, the primary point of ignition (hereinafter “Point of Ignition”) of the Holiday Farm Fire, consistent with the naming of the fire due to the proximity to the area known as “Holiday Farm,” was directly below the EWEB powerlines on the south side of Highway 126 and approximately 100 yards from the Crossover Point with the continually energized Lane Electric powerlines. Based upon information and belief, the Point of Ignition began at approximately 8:10 pm on September 7, 2020, near MP 47 of the McKenzie Highway (Highway 126) in Lane County, Oregon and is set forth on attached Exhibit A. However, other unknown or undiscovered points of ignition could have also existed from the powerlines of EWEB and/or Lane Electric, including an earlier fire starting downriver near MP 43 under the BPA powerlines as claimed by EWEB and Lane Electric as set forth above in Paragraph 18. As also stated above, an official report from investigating agencies has not yet been issued.

24.

As a result of the above, the catastrophic Holiday Farm Fire began on September 7, 2020, resulting in loss of life and devastating losses to those living and earning their living in the McKenzie River Valley.

JURISDICTION AND VENUE

25.

As set forth above, the Plaintiffs are all properly doing business in Oregon. Further, the Plaintiffs each own property burned in the Holiday Farm Fire that is in Lane County, Oregon, which is the property and basis for the claims contained herein. Further, the Defendants each own and operate powerlines along with related utility infrastructure in Lane County, Oregon, which are at issue in this matter. Specifically, jurisdiction is proper with respect to claims against BPA per 28 U.S.C. §1331 and 28 U.S.C. §1346(b). In addition, jurisdiction is proper with respect to claims against EWEB



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and Lane Electric per 28 U.S.C. §1367 as such claims are so related to the claims against BPA and they form part of the same case or controversy.

ALLEGATIONS

26.

Specifically, EWEB, Lane Electric and BPA's failure and inexplicable refusal to preemptively deenergize their respective powerlines in advance of the forecasted high winds and EXTREME fire conditions were aggravated by:

- a) Failure of EWEB, Lane Electric and BPA to monitor and ensure proper tension of their respective powerlines to prevent sagging and contact with other powerlines along with the surrounding trees, vegetation and the ground;
- b) Failure of EWEB, Lane Electric and BPA to implement and maintain proper vegetation and tree management tactics and procedures to ensure their respective powerlines were safe from surrounding trees and vegetation falling upon them during high wind events, including trees that would fall across their powerlines to their height in high predicted winds;
- c) Failure of EWEB, Lane Electric and BPA to properly stage employees and crews in advance of the forecasted high winds and EXTREME fire danger to patrol and monitor their respective powerlines, including monitoring where the EWEB, Lane Electric and BPA powerlines join or intersected at the Crossover Point, prior to the ignition of the Holiday Farm Fire, including at ignition points near MP 43 and MP 47 along the McKenzie Highway, after the forecasted high winds had begun and trees were falling on their powerlines;
- d) Failure of EWEB, Lane Electric and BPA to coordinate and communicate between themselves regarding the status and condition of their respective powerlines, especially considering the proximity of their respective



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powerlines, including at the Crossover Point or where the EWEB and BPA lines join below Cougar Dam;

- e) Failure of EWEB, Lane Electric and BPA to move employees and crews into place once the winds and tree fall began to facilitate quick deenergizing of their respective powerlines so as not to impede or delay the efforts of the firefighters and other first responders to control, suppress or minimize the Holiday Farm Fire;
- f) Failure of EWEB, Lane Electric and BPA to properly train and ensure its employees and crews were prepared to identify and appropriately respond to extreme weather and fire conditions, including being prepared to deenergize the involved powerlines or confirm they were deenergized so that the efforts of the first responders to promptly and fully engage the Holiday Farm Fire were not delayed or hampered;
- g) Failure of EWEB, Lane Electric and BPA to coordinate and communicate with firefighters and other first responders in advance of the ignition of the Holiday Farm Fire to ensure timely and proper response to any fires ignited by their respective powerlines or utility infrastructure;
- h) Failure of EWEB, Lane Electric and BPA to voluntarily and preemptively deenergize their respective powerlines and then subsequently failing to ensure deenergizing their respective powerlines after trees and vegetation began falling on them and their respective powerlines began to sag; and
- i) Failure of EWEB, Lane Electric and BPA to operate, maintain and repair its utility infrastructure, including their respective powerlines, so that they could withstand the foreseeable risk of fire.

27.

EWEB, Lane Electric and BPA own, operate and maintain high-voltage powerlines and along with related utility infrastructure throughout Lane County, Oregon,



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including the subject powerlines that are at issue in the matter. The distribution and transmission of electricity through high-voltage powerlines by the Defendants results in them needing to exercise care to protect the public, including the communities and residents up the McKenzie River Valley along with their property. Further, EWEB, Lane Electric and BPA have knowledge and expertise that is unique to their operation of utilities that cannot be known by the general public or even first responders, including firefighters.

28.

In November 2019, long before the Holiday Farm Fire ignited, Governor Kate Brown's Wildfire Council explained in its Recommendations on Utility Preparedness:

“Electric and utility companies have a duty and obligation to provide safe, adequate, and reliable services to customers in their respective service territories. Utilities are obligated both by law and good business practices to protect their assets – and their customers – from the effects of wildfire.” Page 19 of the Governor's Council on Wildfire Response November 2019: Report and Recommendations.

“As the frequency, intensity and duration of wildfires has increased in the West, there is a need to have electrical companies take measures to reduce the risk of these events. For example, powerline fires are on average 10 times larger than fires from other causes. Due to the often remote location, power line fires have the potential to be larger than fires from other causes. Suppression of these fires during extreme weather conditions has become less effective. Reducing the risk of transmission-caused wildfire will have a direct and positive benefit to Oregon's effort to reduce human-caused wildfires.” Page 28 of the Governor's Council On Wildfire Response November 2019: Report and Recommendations.

Upon information and belief, the Defendants were well aware of the risk created by fires from powerlines and the option of preemptively deenergizing their respective



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powerlines in advance of forecasted EXTREMELY CRITICAL weather conditions and EXTREME fire conditions which were well publicized and disseminated in advance of the Holiday Farm Fire by the media and National Weather Service.

29.

Specifically, the National Weather Service issued a “Red Flag Warning” in advance on September 5, 2020, that went into effect at noon on September 7, 2020, and was to remain in effect until September 8, 2020, at 10:00 pm. The National Weather Service issues a “Red Flag Warning” when warm temperatures, very low humidity and strong winds are expected to combine to produce an increased and severe risk of fire danger.

30.

On the morning of September 7, 2020, the National Weather Service continued its warnings stating the area including the McKenzie River Valley was on track for an extremely dangerous period of fire weather with winds expected to reach speeds of 60 mph to 80 mph, thereby justifying the rare EXTREMELY CRITICAL designation and warning.

31.

It was common sense and consistent with the Wildfire Response Council Report, the existing conditions and the warnings from the National Weather Service that any resulting fire would be very difficult to contain and potentially catastrophic.

32.

Due to the acts and/or omissions of EWEB, Lane Electric and BPA as described above, their respective powerlines and utility infrastructure were a substantial factor in causing or contributing to the Holiday Farm Fire. In addition to subsequently discovered information and investigation results pointing to an earlier ignition source near MP 43 on the McKenzie Highway from the BPA lines as described above, it is also information and belief that powerlines of EWEB and Lane Electric came together at the



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Crossover Point which caused the EWEB powerlines that were then in contact with or near the ground and the surrounding vegetation at the Point of Ignition to start or contribute to the Holiday Farm Fire which was unable to be stopped. Over the following hours, the Holiday Farm Fire spread exponentially, including burning and engulfing approximately 17,000 acres managed and owned by the Plaintiffs in Lane County, Oregon, resulting in the catastrophic losses and damages described below.

FIRST CLAIM FOR RELIEF

Negligence

(Against EWEB, Lane Electric and BPA)

33.

The Plaintiffs reallege Paragraphs 1 through 32 above into this First Claim for Relief – Negligence.

34.

For the reasons set forth above, including the allegations in Paragraph 26 to Paragraph 32 above, the acts and/or omissions of EWEB, Lane Electric and BPA were unreasonable and resulted in their breach of duties and the foreseeable risk of harm to the Plaintiffs.

35.

As a result of EWEB, Lane Electric and BPA's negligence, the Plaintiffs were damaged as alleged with specificity below.

SECOND CLAIM FOR RELIEF

Trespass

(Against EWEB, Lane Electric and BPA)

36.

The Plaintiffs reallege Paragraphs 1 through 35 above into this Second Claim for Relief – Trespass.



37.

For the reasons set forth above, EWEB, Lane Electric and BPA committed a trespass upon the subject property owned by the Plaintiffs by causing the resulting Holiday Farm Fire to enter Plaintiffs' lands without authorization and causing the damages alleged with specificity below.

THIRD CLAIM FOR RELIEF

Nuisance

(Against EWEB, Lane Electric and BPA)

38.

The Plaintiffs reallege Paragraphs 1 through 37 above into this Third Claim for Relief – Nuisance.

39.

The Plaintiffs, as owners of the subject properties, were entitled to exclusive control, quiet use and enjoyment of their respective lands. As alleged above, the acts and/or omissions of EWEB, Lane Electric and BPA resulted in the creation of a nuisance and the resulting damages as alleged with specificity below.

FOURTH CLAIM FOR RELIEF

Gross Negligence/Recklessness

(Against EWEB, Lane Electric and BPA)

40.

The Plaintiffs reallege Paragraphs 1 through 39 above into this Fourth Claim for Relief – Gross Negligence/Recklessness.

41.

Per ORS § 477.089(2)(b) and ORS § 477.092, the Plaintiffs are entitled to their recoverable damages, including twice the amount of economic and property damages,



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upon proof that the Defendants acted as a result of recklessness or gross negligence.

DAMAGES

42.

The Plaintiffs reallege Paragraphs 1 through 41 above into this section regarding their respective damages.

43.

As set forth above, the Plaintiffs have been damaged due to the acts and/or omissions of EWEB, Lane Electric and BPA, resulting in loss of merchantable timber, sub-merchantable timber, pre-merchantable timber, and damage to bare land—plus additional damages and mitigation costs including without limitation reforestation, damage and repair costs to roads and infrastructure, and loss of production due to resulting seedling shortages.

44.

Due to Defendants' acts and/or omissions, each of the Plaintiffs has been damaged in the following amounts, which will be amended and updated up through trial, as discovery and litigation continues:

- a) Giustina Land & Timber Co. – at least \$42,723,162 total. Specifically, Giustina Land & Timber Co. has suffered damage to land and timber in the amount of \$41,006,348 in total loss value comprised of 63,437.6 MBF of merchantable timber, 22,208.2 MBF of sub-merchantable timber, 5,637 MBF of pre-merchantable timber and damage to 10,146.3 acres of bare timberland. In addition, Giustina Land & Timber Co. has suffered additional fire damages and mitigation costs in the amount of \$1,716,814 for reforestation, loss of production due to resulting seedling shortages, road repair costs and infrastructure repair costs.



- b) Giustina Tree Farms Limited Partnership – at least \$17,334,631 total. Specifically, Giustina Tree Farms Limited Partnership has suffered damage to land and timber in the amount of \$16,324,873 in total value loss comprised of 19,942.5 MBF of merchantable timber, 5,685.0 MBF of sub-merchantable timber, 3,741.5 MBF of pre-merchantable timber and damage to 5,139.9 acres of bare timberland. In addition, Giustina Tree Farms Limited Partnership has suffered additional fire damages and mitigation costs in the amount of \$1,009,758 for reforestation costs, lost production due to resulting seedling shortages and road repair costs.
- c) Giustina Woodlands Limited Partnership – at least \$8,372,677 total. Specifically, Giustina Woodlands Limited Partnership has suffered damage to land and timber in the amount of \$ 7,956,236 in total value loss comprised of 16,542.2 MBF of merchantable timber, 3,630.4 MBF of sub-merchantable timber, 1,796 MBF of pre-merchantable timber and damage to 2,794.6 acres of bare timberland. In addition, Giustina Woodlands Limited Partnership has suffered additional fire damages and mitigation costs in the amount of \$416,441 for reforestation and loss of production due to resulting seedling shortages.
- d) Cadore Timber Co. – at least \$481,992 total. Specifically, Cadore Timber Co. has suffered damage to land and timber in the amount of \$460,423 in total value loss comprised of pre-merchantable timber and damage to 156.9 acres of bare timberland. In addition, Cadore Timber Co. has suffered additional fire damages and mitigation costs in the amount of \$21,569 for reforestation and lost production due to resulting seedling shortages.



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45.

Further, Plaintiffs are entitled to double damages as alleged in the Fourth Claim for Relief for Gross Negligence/Recklessness.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. **First Claim of Relief (Negligence)** against Defendants, and each of them:

- a. for Plaintiffs' damages in the sum of \$68,912,462; and
- b. for Plaintiffs' costs and disbursements incurred herein.

2. **Second Claim of Relief (Trespass)** against Defendants, and each of them:

- a. for Plaintiffs' damages in the sum of \$68,912,462; and
- b. for Plaintiffs' costs and disbursements incurred herein.

3. **Third Claim of Relief (Nuisance)** against Defendants, and each of them:

- a. for Plaintiffs' damages in the sum of \$68,912,462; and
- b. for Plaintiffs' costs and disbursements incurred herein.

4. **Fourth Claim of Relief (Gross Negligence/Recklessness)** against Defendants, and each of them:

- a. for Plaintiffs' damages in the sum of \$68,912,462, which shall be doubled pursuant to ORS § 477.089(2)(b) and ORS § 477.092 for a total of \$137,824,924; and
- b. for Plaintiffs' costs and disbursements incurred herein.



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DATED this 15th day July, 2024.

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s/ Gregory T. Lusby
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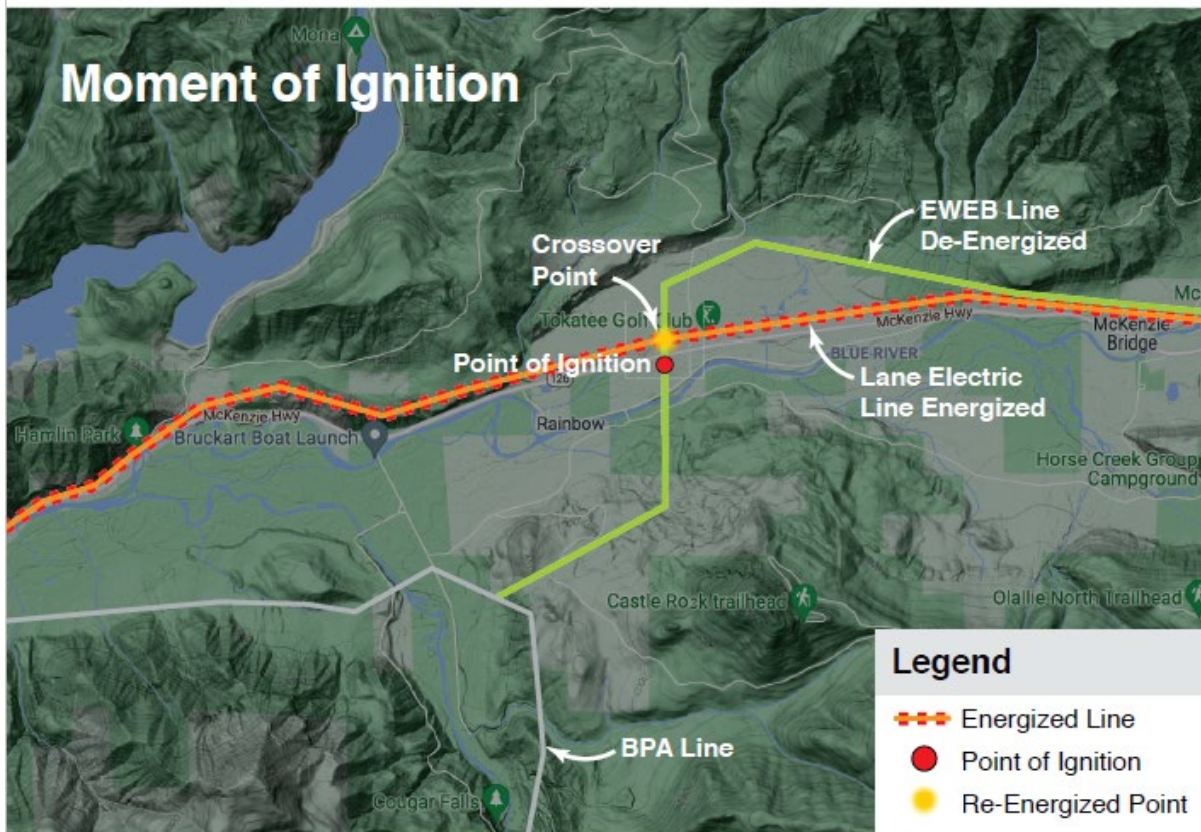


EXHIBIT A
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